

# **Alabama Sentencing Commission**

## **Minutes of Commission Meeting November 9, 2007**

The Alabama Sentencing Commission met in the Large Classroom of the Judicial Building in Montgomery on Friday, November 9, 2007. Present at the meeting were:

Hon. Terri Bozeman Lovell, District Judge, Lowndes  
Ellen Brooks, District Attorney, 15<sup>th</sup> Judicial Circuit, Montgomery  
Lou Harris, D.P.A., Faulkner University, Montgomery  
Stephen Nodine, County Commissioner, Mobile County  
Joel Sogol, Esq., Tuscaloosa  
Hon. Ben McLaughlin, Presiding Circuit Judge, 33<sup>rd</sup> Judicial College, Ozark  
Rosa Davis, Chief Deputy Assistant Attorney General

### **Advisory Council:**

Adolph South, Tuscaloosa  
Chief James Henderson, Clanton Police Department  
Eddie Cook, Associate Director, Board of Pardons and Paroles, Montgomery  
Doris Dease, ANVSP, Inc., Wetumpka  
Denise Devane, Birmingham

### **Staff:**

Lynda Flynt, Executive Director  
Melisa Morrison, Research Analyst  
Bennet Wright, Statistician

### **Others Attending:**

Carolyn Bowdin, AL-CURE  
Sharon Bivens, Legislative Fiscal Office, Montgomery  
Annette Brown, AL-CURE  
Rosemary Collins, AL-CURE  
Robert Oakes, Board of Pardons and Paroles  
Mary Pons, ACCA  
Buddy Sharpless, Director, Association of County Commissions  
Miriam Shehane, VOCAL  
Diana Summerford, AL-CURE

### **Welcome and Introductory Remarks**

The meeting convened at 10:00 a.m.. In the absence of Commission Chair, Judge Joe Colquitt, Lynda Flynt, Executive Director, called the meeting to order and made introductory remarks. Ms. Flynt advised that Judge Colquitt had an unavoidable conflict

today but would be present for future meetings. Ms. Flynt noted that she and Rosa Davis would fill in for him as moderators of the meeting.

Ms. Flynt announced that the vacancy on the Advisory Council by the death of Sheriff James Hayes who would be missed. She expressed appreciation for his years of service. Ms. Flynt noted she had contacted Bobby Timmons of the Sheriff's Association to ask for an appointment to fill Sheriff Hayes' unexpired term which ends in February 2009.

Ms. Flynt welcomed Buddy Sharpless, Director of the Association of County Commissions, and thanked him for his willingness to become more involved in the work Commission. Ms. Flynt noted the importance of the participation of all levels of government in solving the problems in Alabama's criminal justice system. Ms. Flynt offered to meet with Mr. Sharpless and others to update them on Commission activities.

Ms. Flynt introduced a number of Commission issues and projects:

Commission staff attended the Community Corrections Association meeting and Rosa Davis would present a report covering community corrections, standards, and evaluations. Through the technical assistance provided by the Vera Institute of Justice and Pew Charitable Trust, the Commission recently sent out a community corrections survey to obtain otherwise unavailable data now needed to evaluate the strength of community corrections programs. The surveys should be completed and analyzed by the time the Commission meets in January.

Melisa Morrison, research analyst and Bennet Wright, statistician, will give the Commission an update about the different training efforts of the staff. Although the commission staff conducted workshops for the sentencing standards and then followed up with the electronic worksheets training has to be a continuing effort. Having a hotline is not sufficient. The staff needs to reach everyone involved in the sentencing process for training

Ms. Flynt is on the legislative committee to the Chief Justice's drug court task force, which among other things is working on a model drug court bill.

The commission staff has also been involved with the Women and Girls Prison Inmates Task Force chaired by Representative Barbara Boyd. Ms. Flynt and Rosa Davis attended those meetings, as well as, the Legislative Oversight Committee meetings chaired by John Rogers. The Legislative Oversight Committee is asking for legislation. The committee is interested in any legislative package that the Commission approves, because it wants to help support ASC legislation.

Rosa Davis will give the Commission an update on the Denver Conference sponsored by Pew Charitable Trusts and the Vera Institute of Justice. Alabama was one of four states that attended. Alabama Representatives attending were Ellen Brooks; Rosa Davis; Chief Justice Sue Bell Cobb; Callie Dietz, administrative director of courts; Cynthia Dillard;; Scott Rouse, assistant legal advisor to the governor; and Vernon Barnett, chief deputy

commissioner of the Department of Corrections. The other states were impressed with Alabama's progress in sentencing reform and the cooperation between state agencies and departments in Alabama. Ms. Davis will also give the Commission an update about what came out of that meeting as a recommendation to expand and improve the quality of services in Community Punishment in Alabama.

The Commission faces a number of data issues. The Commission has lost the AOC programmer who has been assisting the Commission. However, Callie Dietz and the Chief Justice have assisted in finding a replacement in AOC. Bennet Wright and Melisa Morrison are initiating the programmers into the past, present, and future needs of the commission, especially the electronic worksheets, which still need work, and making further improvement in the MIDAS program to make it an effective tool for case management and data collection for community corrections programs and drug courts.

The Commission is also looking at risk assessment. Ms. Flynt stated that Bennet Wright will tell the Commission about some of the meetings that he has attended on risk assessment. Rosa Davis will also talk about risk assessment.

The Judicial Study Commission will meet on December 14<sup>th</sup> and has asked for recommendations for areas of study. Ms. Flynt is a member of that Commission. She requested input from the Sentencing Commission to take to that group.

The Commission's next project and always a continuing project is its annual report. She noted that possible meeting dates for the next Commission meeting are listed under new business on the agenda. . Hopefully, the staff will have a draft of the report or an outline for members to look at then. Vera Institute of Justice will be coming back to give the Commission the results of the community corrections survey.

### **Report of Sentencing Standards Committee**

Rosa Davis, chair, reported for the committee.

The current data is not reliable enough to report compliance with the standards at this stage. There are, however, some indications that most jurisdictions are considering the standards in sentencing. There are about 13,000 worksheets on file (about 85% of the worksheets that should have been completed) at this time. This figure provides some information concerning the extent in which the worksheets are filled out. The Commission, however, will not what sentences look like until the staff refines this year's AOC data. Ms. Davis also noted that, even with the crime rates dropping, there were about 1600 more people convicted of felonies in 2006 than in 2004.

The standards committee discussed data and the problems the Commission is having with data. The committee also talked about the problems with evaluating the standards, because of the variety of ways in which people are sentenced in Alabama. The Commission staff found there are about 244 different sentence types entered in Alabama in the SJIS data system when, basically, there are only about 14 ways a person can be

sentenced. There are two things going on (1) a variety of different sentencing orders - some which are authorized and some which may or may not be; and (2) human error - a clerk reading what the judge does and typing it into the computer. Because SJIS does not always correctly record the judge's sentence, the commission staff is working with court specialists to provide more training to correct these issues.

The standards committee suggested that the sentencing commission form a committee to work on a proposed sentencing order to help with some of these data issues. That committee will consist of judges, district attorneys, and a representative from the Department of Corrections, Probation and Parole, a representative from community corrections, a court clerk and defense lawyer. The variety of participants will bring input from different parts of the state draft a proposal that court personnel will adopt and use. This effort may be critical to obtaining more complete data.

A recommended order might be considered by the Supreme Court as a rule or as one of the appendices to the criminal rules or enacted as a statute.

The first year's experience points to some things that could be clarified by rewriting some of the instructions for using and implementing the standards. Those instructions were approved by the legislature along with the standards and any changes would have to be submitted to the legislature for approval. The committee will consider clarifying the instructions.

Worksheet issues:

(1) How to sentence an offender whose score is higher than the scores on the sentence length charts? The committee suggested adding in the instructions that a score higher than those listed makes the case a non-worksheet sentencing event. The case obviously falls outside the worksheets and needs to be sentenced under existing law outside the worksheets.

(2) What happens if the sentence range under the worksheet exceeds the 15 or 20 years allowed for use of split sentence? If the straight sentence range recommendation is 120 months (10 years) to 245 months which is 20 years plus five months, can the judge sentence somebody to 245 months and split the sentence. The Committee's answer is no? The standards are not intended to change sentence lengths applicable to split sentences under existing law. Therefore the initial sentence must be within the 15 or 20 year range for the judge split the sentence. The split sentence law is still applicable and the split is available only under that law. The judge can only apply a split 3 years or less for somebody who is sentenced from 1 to 15 years or 3 to 5 year split for somebody who sentenced 15 to 20 years. The standards do not change that.

(3) An issued that has come up since the committee met is whether, when the IN/OUT recommendation is "prison", can the judge split the sentence and then suspend the split or incarceration portion of the split. Ms. Davis believes the

answer is no. A prison recommendation means the offender has an unsuspended sentence to prison or community corrections either as a straight prison sentence or the incarceration portion of a split sentence.

(4) Ms. Davis also talked to the Commission about the meaning of “sentencing under the standards.” The original intent of the committee was that a sentence is a legal “standards” sentence when the IN/OUT recommendation is prison and the judge sentences to an unsuspended period of incarceration (either straight or split) according to the recommended sentence on the sentence length tables; or when the IN/OUT recommendation is “non-prison” and the judge suspends the entire sentence imposed (placing the defendant on probation), sentences to the county jail, or sentences to community corrections. If the recommended disposition is “prison” the sentence must include an unsuspended period of incarceration in prison. If the recommended disposition is non prison, any sentence to prison must be suspended and the length of the sentence may be based either on the sentence length tables or existing law.

(4) A youthful offender incarceration is an incarceration. The committee felt this should be clarified.

(5) Ms. Davis also noted there is some confusion on scoring all offenses sentenced at one sentencing event. The scoring only applies to *convicted* offenses. Charges in which a nolle prosequi or dismissal is entered are not counted for scoring purposes. These charges could be considered by the judge in deciding where in the sentence range the offender is sentenced but they are not counted for scoring purposes.

(6) The Commission has found instances where a judge sentences to prison as a condition of probation. Sometimes that means a split. The judge sentences someone to 10 years suspended puts them on probation with a condition of probation as 12 months in the penitentiary. What does it mean? That is a prison not a non prison sentence, even though the judge calls it probation.

(7) Where the offense sentenced is felony DUI does the worksheet preparer count prior misdemeanor DUI convictions on the misdemeanor section of the worksheet? The answer is yes. What if you are being sentenced on a DUI felony and you have a prior felony DUI do you then count the 3 misdemeanors and the prior felony as priors. The answer is yes. This was more clear in the original instructions.

(8) There were some e-worksheet and case merging issues that have come up.

(a) When the defendant pleads down from a non-worksheet to a worksheet offense or from one class of felony to another and the offense changes from charge to conviction, how does the worksheet preparer address the change. These situations are easy if the worksheet preparer is using the paper worksheets. The preparer simply prepares a new worksheet for the convicted offense. If the preparer is using e-worksheets there is more of an issue.

(b) If more than one offense is sentenced at one sentencing event, there should be one official worksheet which should be filled out for the most serious offense using the rules for determining the most serious offense. If the preparer is using e-worksheets, the offenses or cases should be merged so that only one worksheet is submitted. In some areas the ASC is getting two worksheets out of merged cases. There is only one worksheet per sentencing event. The committee needs to address that, but also explain the merge functions on the e-worksheets.

(10) Another issue that has come up is if you are a two county or more circuit or a circuit that has two courthouses in it with separate jurisdictions can you merge cases from the two jurisdictions. The answer is no. They are not one sentencing event. They are sentenced in two separate places. There are people who have real issues with that because they tend to look at them together and sentence them together. You have to do two separate worksheets on them.

Ms. Davis noted that changes can be made to the proposals and submitted back to the committee and then to the Commission for legislation for the legislature to approve changes in instructions. Ellen Brooks asked if the legislature must approve changes in the instructions even if the change merely clarifies the instructions. Ms. Davis responded if it changes yes, because they approved the original instructions. Ms. Brooks noted that if the changes are merely clarification perhaps additional legislative approval is not required. Ms. Davis suggested that the standards committee consider this at its next meeting.

The standards committee did not make any firm recommendations at its last meeting, because there was not adequate representation from some of the players that need to participate in any types of changes that are made. The Standards committee will address these issues at a future meeting. That will give all of the major segments/major players an opportunity to be present to make sure that their concerns are addressed or at least heard.

Ms. Davis stated that the last thing that the standards committee looked at was the proposal by the Commission for truth-in-sentencing standards that will supplement the initial sentencing standards. The Committee members present recognized that the TIS standards could not be proposed until the Commission can verify that the initial standards are working. Committee member present recognized the need for additional data and analysis prior to attempting to establish the TIS standards. Those present, therefore, suggest that the Commission seek to delay the presentation of TIS standards. A firm date will be proposed at the next Commission meeting after consideration by the standards committee or the legislation committee. The Commission needs to iron out any problems that exist in the use or non use of the initial standards so that it can move to voluntary truth-in-sentencing standards. The Commission must also respond more completely to the legislative mandate for addressing overcrowding (presently 200% of design capacity) and providing additional sentencing alternatives for use by judges before a rational truth-in-sentencing scheme can be proposed.

Two things do need to be done before a valid truth-in-sentencing model can be proposed: (1) increase capacity in the prison system and (2) Increase the use of alternative sentencing in Alabama, increase the use of community corrections, increase the effectiveness and use of probation in some instances, but increase the use of intermediate alternatives.

Ms. Davis briefly noted the steps to developing and implementing truth in sentencing:

1. Address the capacity issues leading to overcrowding.
2. Establish reliable data to construct the standards, (who's in prison, how long have they served, what are they there for and what is their history like) as a starting point.
3. Develop the proposed standards.
4. Project the effect proposed changes would have on the corrections system (prisons, community corrections and probation) in Alabama. Ms. Davis stated that in order to make the projection as to what's needed to accommodate truth-in-sentencing, we have to have reliable data. Reliable information is also needed to show how these standards are working right now.

Ms. Flynt informed the Commission that she and Ms. Davis both were misquoted in the newspaper on the effectiveness and compliance with the standards, Ms. Davis as to a compliance percentage, which Mrs. Davis did not provide, and Ms. Flynt as to the Attorney General's position on parole and post incarceration supervision. Ms. Flynt told the Commission that the attorney general has been supporting truth-in- sentencing and has given a lot help to the sentencing commission.

### **Report from Sentencing Commission Legislative Committee and Vote on Proposed Legislation**

Ms. Flynt thanked Dr. Lou Harris, chairman of the Legislative Committee, for his support of the Commission, not only through serving of chair of this important committee, but also by providing a succession of interns to work with the Commission. She also thanked Sharon Bivens of the Legislative Fiscal Office for looking over the legislation and assisting with making appropriate corrections.

Dr. Lou Harris presented the Legislative Committee's report to the Commission. He noted that in looking at the five proposals, A-F, only two of passed the committee by a unanimous vote. Dr. Harris asked committee members present to comment on the minority views on each piece of legislation.

*Split sentencing* – The majority favored.

Dr. Harris noted that the presentation of the committee is the motion on the floor. The motion was seconded. The majority favored.

*Community Corrections Act*

There were two dissensions and one with an amendment. Dr. Harris asked if the person who had the amendment was present.

Cynthia Dillard stated that she does not have an amendment ready yet. Her concern is with section 2 of the proposal that allows the commissioner of corrections, with the approval of the sentencing judge and the director of the Board of Pardons and Paroles, to transfer an inmate to L.I.F.E. Tech. This section needs clarification. L.I.F.E Tech clients are supervised by Pardons and Paroles employees who have supervisory jurisdiction over only probationers and parolees. These would be neither. Ms. Dillard suggested the Commission is planning post release supervision as a part of a sentence of incarceration for truth-in-sentencing and suggested this may be the place to start. She noted that it can't be parole because there is no hearing; there is no victim notification and no board signatures.

Ellen Brooks noted concern over broadening the authority of Pardons and Paroles authority without a judge being involved. Ms. Flynt reminded the Commission the section requires judicial approval of the transfer.

Ms. Dillard stated that she is not opposed to the concept but needs to know how it would work and how Pardons and Paroles gains supervision. She thinks that the committee needs to work on that section. If inmates are paroled, they go out on parole supervision. How long would an inmate stay in L.I.F.E. Tech and how would they be released from the program, which is designed as a six month program? Would the concept be limited only to those who are within 6 months of release.

Ms. Flynt stated that possibly the reason behind section 2 is to help establish a continuum of punishment. Under current law the Commissioner can initiate and institutional diversion which may be accomplished with the approval of the judge. L.I.F.E. Tech is thought of a sanction that could fall between community corrections and prison.

Ellen Brooks moved to delete Section 2 of the proposed bill. The motion was seconded and the motion carried. Section 2 was deleted from the proposal by vote of the Commission.

The next part of the proposal on community corrections was to amend subsection 14 of the community corrections act to delete the sale of controlled substances from the offenses excluded from community corrections programs. This proposal needs some technical and typographical changes which will be cleared up when the bill goes to the Legislative Reference Service for final drafting.

Rosa Davis noted that she voted against this provision on behalf of the attorney general. The attorney general is opposed to allowing the amendment that removes sale of drugs for distribution from the exclusions.

Dr. Harris called for a vote on this act. The proposed rule was approved as amended on motion of Ms. Dillard. (5 in favor, 2 opposed)

*Theft of Property*

Dr. Harris stated that six people voted yes and one person voted no. He asked if the person was present that opposed this bill.

Ms. Flynt explained to the Commission this amendment is requested by the Warrant and Indictment Committee of the Supreme Court through the Alabama Law Institute. The proposal would clear up some confusion in whether the theft of certain items, abandoned property or property under the control of a law enforcement officer, is covered by degrees based on the amount of property stolen. These two types of property were added to a Commission bill by the Legislature and Ms. Flynt is concerned the Commission is going to get blamed for it when and if it is ever challenged. Ms. Flynt stated that she did promise the Warrant Indictment Commission that she would bring it up to the legislative committee and if they approved to the sentencing commission for their consideration. That's how the Commission got it.

Dr. Harris stated that Rosa Davis voted against it and asked if she would like to speak to it?

Ms. Davis stated she thought the statute is clear as written and does not need amendment to clarify degrees. She does agree with the proposed change on page 4 that adds the word "unauthorized" before "control" to make the elements of the "theft" more clear.

Dr. Harris asked for a vote on the committee recommendation. The Commission approved the proposed bill.

*Medical Geriatric Release*

Ms. Davis noted that Vernon Barnett and Commissioner Allen could not attend the meeting this morning and this is their bill. In Colorado Ellen Brooks, the Chief Justice, and Vernon Barnett talked about the geriatric bill. After listening and discussing with them Mr. Barnett felt like on behalf of the Department of Corrections that this bill could be improved and could probably meet the objections of others. Ms. Davis moved to table the proposal. Ellen Brooks seconded. The proposed bill was tabled.

*Prison Industry* – The proposed bill was approved.

Ellen Brooks asked if her exception about security is included. Ms. Flynt stated she included Ms. Brooks' comments.

Dr. Harris asked for a vote. The Commission approved the proposed bill.

*Truth-In-Sentencing*

Dr. Harris stated that this presentation is on behalf of the staff to extend the date for proposing Truth-in-Sentencing Standards. They discussed this at the legislative committee meeting. There were two dissensions on this.

Ellen Brooks asked if someone could share with her since she was absent from that meeting the committee arrived at 2011. She stated that she understands that there was some discussion to move it even further back, but why not 2010. Ms. Brooks asked Ms. Davis to explain to everyone why she thinks it would take this period of time and no more or less.

Ms. Davis stated that the development issue is the 2 years required to develop the proposed standards. She further stated that she thinks it could take more, but it will not take less. From a historical prospective, it will take a minimum of 2 years to pull together the data and come up with the initial analysis, then the committees meet to decide what to do with the initial analysis and to design the final result. The end result should be something both the Commission and the Legislature can approve with confidence. Ms. Davis noted that the first time the Commission developed standards, it was accomplished in such a short span of time the Legislature did not have time to consider the proposals during the first session. Then the Commission took the summer to work on training and demonstrating the proposals, getting input and looking at any changes that needed to be made the next year.

The Commission began the 2004 process in 2002 by beginning to pull the data together. The Commission had the data in 2003 and formulated the standards in 2004. That's one part of it. The other part of it is evaluating what we have now, how it's working and are there significant things that have to be done or changed to make that work. That is increasing community corrections, looking at the risk assessment, developing risk assessment and evaluating. Right now it is going to take us 6 months or maybe more to begin to evaluate what we have. The Commission will be gathering the data for just the time served standards and developing those standards while we are doing this evaluation process.

Bennet Wright stated that one of the major components that the Commission didn't really anticipate when it arrived at that 2009 figure is that for truth in sentencing standards the Commission is actually starting from scratch with the data. The work that the commission originally put in to develop the current standards it is doing two parallel tdata sets. The Commission is looking at this data from the current system while pulling new data to actually to construct the truth-in-sentencing standards because the two models are actually based on two different criteria, time imposed and time served.

Ms. Brooks stated that her concern, obviously, is that she won't live long enough to see this. She further stated that this is the whole big reason that she has volunteered for 7 years to do this and doesn't know if she can do more than 10. She stated that she is really disappointed that the Commission is not moving any faster. Ms. Brooks noted that part of her concern is the legislature because she thinks that it's possible that the first time that the Commission goes to them it won't go through which means 2012. Ms. Brooks noted

that she is very eager to move this as quickly as the Commission can and understands the need to be accurate and data based. Ms. Brooks asked what would it take to get the Commission really kicking on this. Is it money to hire Applied Research Services? She asked that instead of spending so much time on bills that other groups are coming up with that the Commission seems to spend literally years on she asked what can the Commission do to move this forward.

Ms. Davis stated that she thinks that there are some things that are going to be discussed today that are going to help the Commission move it fast enough to be able to be able to do in 2011. The Commission will talk about community corrections and risk assessment. Those things will be vital to making all of this work so that when the Commission presents it if it is presented in 2011 it will have such a solid base that the Commission won't have the difficulties it has had in the past. What the sentencing commission staff wants to do is present as solid of package to the legislative as it can. To do that and do it really well and do it by 2011, yes additional funding for technical assistance would be good. There are a lot of foundations and groups that want to put money and technical assistance in Alabama over the next 2 years. It will also help if the district attorneys are on board with the voluntary standards, if they are using them, if they are urging their judges to use them, if defense lawyers are pushing the standards for their clients and trying to make it work and if judges are cognizance of the standards as they exist today and making their best effort to make them work. Those things need to be happening in the community in order to get to the truth-in-sentencing that we want to have.

Ms. Brooks suggested to avoid the same problem the Commission had last time that the Commission set a date internally not by statute but internally of having this ready in 2010 so that it can then refine it, train, educate and lobby for its passage in 2011 because if the commission doesn't have it ready to begin the end of the session of 2011 it has really said 2012.

Ms. Flynt noted that in addition to community corrections being in place we have to be ready for an increase in the prison population. We are already almost 200%. With the sex offender mandatories we are going to be feeling that which is a triple increase. If you say what we can do it is not only staff that developed the standards, but it's a new prison.

Ms. Davis stated that the attorney general, Troy King, is extremely passionate about implementing truth-in-sentencing in Alabama and is opposed to any delay in implementing truth-in-sentencing. She noted that's something that she has got to take into consideration.

Miriam Shehane commented that victims have supported truth-in-sentencing and to keep on delaying it they are going to give up hope. Ms. Shehane stated, "I think that we have got to tell them that we are serious about it and that we are going to do whatever it takes."

It was noted that the State must look at the whole corrections infrastructure as well as the prison infrastructure. County jails and community corrections are far ahead of the game in Mobile as it shows. The legislature not only looks at community corrections this as

one of the most essential things but must also invest in the prison system. A lot of people we can turn their lives around with the community corrections side. That's why it is so important to see that balance but if we don't have the funds and the legislature and the governor cannot continue to invest in the prison system we are going to find ourselves implementing something that we can't do anything with.

A member suggested coming up with and going ahead and getting a model truth-in-sentencing act. Not to pass it but just have so that they can see what the committee is thinking about as far as a model act is concerned when they are trying to put the data together.

Ms. Flynt noted that the blueprint of the initial proposal is in the Sentence Reform Act of 2003.

Ms. Brooks suggested postponing this until the next commission meeting.

Dr. Harris noted that the amendment is to table this until the next commission meeting. Seconded.

Ms. Davis commented that in line with that as part of the timeline and looking at what has to be done and looking at what Commissioner Allen is doing and is suggesting to be done with the corrections system and the amount of money to do that, the Commissioner is working hard on the reentry piece and the preparation for reentry into the free world that are really essential to long term cutting recidivism, especially amongst the more active age groups in crime commission. Historically one of the states that has been able to keep the best control over its prison population, and even they now are looking at building more prisons as a result of truth in sentencing, is Virginia. Ms. Davis stated that she thinks that Alabama can do it in less time than Virginia did because we can build on their model. They developed their initial standards and they were in place for 5 years and it took them 5 more years to develop their truth in sentencing into something they felt like was going to work.

Dr. Harris noted that Ellen has called for the question on whether or not to table the truth-in-sentencing amendment until the next meeting. The issue was tabled until the next meeting.

Dr. Harris reminded members that at the last meeting Adolph South was asked to research some information concerning a bill that the Commission was looking at which would give arrest powers to community corrections officers.

Adolph South noted that probably the number one issue of the crime victims is truth-in-sentencing. It might help if the judge sentences someone to 15 years if they tell the victim at that time realistically you are talking about 5 years instead of 15 years. That's really frustrating to crime victims.

Chaplain was asked to do a survey of law enforcement to see where they would stand on the arrest powers for community corrections officers legislation. Chaplain South that Montgomery County act has a local act. The Alabama Peace Officers Association had a state board meeting and also an Alabama Fraternal Order of Police board meeting where Chaplain South presented the proposed legislation.. They had several questions after being briefed on the proposed legislation. In Chaplain South's opinion, based on these meetings, that law enforcement would oppose the statewide legislation for several reasons: Why do the corrections people need arrest authority and who would they answer to? Many of them are private, non-profits who should not have this authority. He stated that if the reason for them to have law enforcement authority is to have access to enter into the AOC records, the corrections officers simply fill out the request form that everyone else uses and present it to the appropriate law enforcement and let them do it for them.

Ms. Flynt noted that having laws enforcement authority allows access to NCIC and other agencies cannot provide community corrections with this access.

Chaplain South stated if the reason is to arrest the violator or the person for violating parole, community corrections make the appropriate report to the appropriate law enforcement officer and let them make the arrest. He further stated assuming this legislation comes forward you will see law enforcement in Alabama mustering to oppose it.

Ms. Flynt thanked Chaplain South for providing the Commission with information on that bill. She stated that even though the Commission had decided not to pursue that legislation she did want him to go ahead and report what he had found.

### **Report on Vera/Pew Multi-State Conference**

Rosa Davis gave the Commission an update on the Denver Conference. She noted that the greatest thing from that conference was that group of people spending that amount of time together talking about what can be done in Alabama. Out of that came a discussion of setting up a timeline for exactly how the Commission will proceed from here to presenting truth in sentencing to the legislature. What are the components that need to be in place? Alabama does need new prisons. Alabama needs a new women's prison and more space for women in prison. Alabama needs at least one two men's prisons.

The first day the group talked about sentencing and sentencing standards and using sentencing standards and sentencing to affect public policy and public safety. After two sessions on those types of topics, Alabama listened to the other three states, Illinois, New Jersey and Connecticut, describe where they are in the sentencing reform process. When the Commission started this project in 2001, Alabama was where these states are now. Alabama is at least 5 to 6 years ahead of them. Ms. Davis noted that other states are now learning from Alabama.

The experts who presented at the conference were Rick Kern from Virginia and Robert Guy, who is the director of probation and parole for community supervision part of the

North Carolina Department of Corrections, Barb Tombs, who is the former director of the sentencing commissions in Kansas and Minnesota. These are people who have a lot of experience in forming sound public policy with an emphasis on public safety dealing with corrections. The group also had an opportunity to talk with Judge Gebelein, who is the chief deputy attorney general in Delaware. He has been a circuit judge in Delaware and was the chairman of the Delaware Sentencing Commission for many years.

The group heard about different sentencing structures across the country and then moved into 2 segments that were really interesting and more helpful for Alabama. One segment was on community supervision. In Alabama the ratio of probation and parole officers, the people who supervise, is at a minimum of about 155 to 1.

When North Carolina enacted its current system, the Commission promoted and got the Legislature to pass laws that limit the number of people a probation officer can supervise based on levels of supervision. The highest number of supervisees is 60. Robert Guy's presentation was quite instructive. His presentation left no doubt that we have a long way to go with community punishment alternatives in Alabama.

The next section was a discussion by Rick Kern of Virginia's implementation of risk assessment. Virginia developed a risk assessment instrument starting with the sentencing standards and looking at the prison recommended offenders. The Virginia Assembly directed the Commission to use risk assessment redirect 25% of those offenders to community alternatives. The Commission analyzed the data on that cohort of offenders; their prison bound offenders based on the recommendations from the standards. They developed a risk assessment applied it to determine the 25% of the lowest risk offenders. Virginia found their recidivism rate was lower for these offenders. Their risk assessment has been in effect for several years now. One caveat for using a risk assessment instrument is that there is no scientifically perfect instrument.

Ms. Davis stated that she has talked to Pardons and Paroles and is looking at what the sentencing commission has and looking at the possibility of taking a county in Alabama and running the Virginia risk assessment against the prison bound offenders in that county using it as a data collection instrument to look at people who have been sentenced in the past to see what it would do and if it would do in Alabama. If the Commission is able to look at something like that, maybe it can skip that whole process that Virginia had to go through. If the Commission tests the instrument on the data and it doesn't work, the Commission will know that the Alabama will still have to go through everything that anybody else does in having to develop such an instrument. Also, Virginia is working with a different data base, Virginia's prison bound offenders, who may not look like Alabama's prison bound offenders. The instrument could tell Alabama, that our prison bound offenders are really lower risk level at the bottom level than theirs were.

Ms. Davis stated that at least 4 foundations attended the meeting. There were foundations who have money and who are excited about what's going on in Alabama. They are excited about what the Commissioner of Corrections is trying to do in Alabama. They are excited about an emphasis being placed on finding and identifying offenders

who are eligible for community alternatives and using those alternatives for the right offenders. Some of them want to provide technical assistance and no money. Some are willing to provide money so that the Commission can get its own technical assistance. Ms. Davis discussed with one of them that the Commission is really comfortable with Tammy Meredith and John Speir of Applied Research Services and what they do for the Commission. There is at least one of those foundations that will be willing to look at a proposal from the Commission for what they might do. All these foundations want their name tied to Alabama.

Another thing that the group talked about is doing four pilot programs around the state. Having those people who provide community punishment working together in those jurisdictions to see how well they can work together, what kind of system we come up with, how to identify which agency has supervision of what (this is working with Pardons and Paroles who are essential to the Commission), working with community corrections defining DA pretrial diversion programs, drug courts and defining who goes where and how the systems work. We want to look at establishing those projects as soon as possible in four relatively diverse counties. The Chief Justice is willing to lead this effort by having a judge in each county assigned as a chair of the local committee to work towards seeing how agencies can work together.

Ellen Brooks stated that it was a good meeting in the sense that she learned that while they were a diverse group and come from their own territories they really have a lot more in common in our goals and mission in this state than differences and that they are willing to sit at the table and work out some of those differences. Ms. Brooks thinks that they came out with some concrete ideas that could move us forward in the next several years. She noted that what we are trying to do is not going to make the prisons come empty. It slows down the entry but more importantly it gets the right people in prison. Ms. Brooks stated that she also learned that we really have to target the population of who goes to which program because in our enthusiasm sometimes we seem to jump on the newest program and send everybody there and it is not necessarily where they should be going. The great news is that we have more options so that we can tailor our programs for our people.

Ms. Davis mentioned that some of the funding that the Commission was looking at is willing to assist with funding development of expanding options where they need to be expanded.

Dr. Harris commented that the Commission needs to be more educated on risk assessments. That issue has come up time and time again. Dr. Merle Freison presented the Commission with a report on risk assessments at one of its meeting. Dr. Harris noted that from what he does know about those risk assessments they are not 100% accurate.

### **Developments in Data and Training**

Melisa Morrison, senior research analyst stated that she and Bennet Wright, statistician, have several data projects going on at this time. She noted that she is extracting data for different projects and doing analysis on all the data. Ms. Morrison talked about three

particular projects that they are currently working on. She gave the Commission some background about the particular project and why they are conducting analysis for that. The first project began when they extracted court records and looking at sentencing information coming from those court records. They have found that there are many different sentence types coming from the court records. Ms. Morrison noted when starting the analysis they thought that they were only looking at about 14 to 25 different sentence types. The first step to several projects was to identify and categorize all of the sentence types.

Ms. Morrison noted that the Commission staff attended the annual conferences and found that their first mistake was that they didn't have the right audience to explain this information to. The court specialists are the ones who need training, instead of the clerks. The court specialists are the ones in the clerk's office sitting at a computer terminal entering court orders that the judges hands down into this black screen called the AOC mainframe.

Before the staff traveled and presented the seminars, there were two things that happened. First, they set up a meeting with Trisha Campbell, who formerly worked at the AOC, and Larry Forston, who is currently working with the AOC. Ms. Campbell worked with court specialists and the information on the court database, the screen that collects the data going in. Ms. Campbell currently works in Lee County as the Court Administrator. The staff asked Ms. Campbell a number of questions about the AOC system. Ms. Morrison explained that it looks like there are no requirements on the sentencing screen. It looks like it is a free for all. The Court specialist can put in whatever he/she wants, and the system is not validating some data field. Ms. Campbell noted that it didn't start out that way. It started out with restrictions. Over time because there are 67 counties in Alabama, there are 67 different ways that court specialist can enter information. Eventually, over time the requirements were removed from the computer. The sentencing commission is the first agency that extracted this information.

The next step after the staff met with Ms. Campbell and Mr. Forston about what the court specialists have been trained to do was to meet with the DOC Central Records. Kathy Holt is the director of Central Records. The staff developed a sentencing manual for court specials with the information obtained from the meeting with Ms. Campbell and Mr. Forston. The staff put an example of a sentence on the court order and then included a screen shot of that data entry screen that a court specialist will use when she sits down to her computer to enter the information from a court order. They created every different example and how that sentencing information should be entered on the screen so that the paper court order and the information on the computer match exactly.

In the meeting with Kathy Holt, the staff learned that AOC programmers developed a new application between the court specialist, AOC and the court record and DOC to pass an electronic transcript back and forth to each other. When the court specialist enters the sentencing information on the sentencing screen and has all the information completed she hits a button and the system creates a transcript that is passed to the DOC central records. DOC enters the information into its database before receiving a defendant for

prison. This saves time and accuracy in not passing a paper transcript back and forth between the court and DOC. A meeting was setup with central records asking not to reject the transcripts. The commission staff also asked their group to review the sentencing manual that has been created for the court specialists.

The first training for court specialist was held on October 5 in Montgomery, Alabama. The second training was held in Rainsville, Alabama on October 19. The staff received very good feedback from each training session.

Ms. Davis stated that what Ms. Morrison just told the Commission is just a little piece of what has to be done in order to make sound public policy based on empirical evidence. First, you have to have the empirical evidence. This is going to monumentally change the quality of the data that the Commission is receiving on which to make these decisions.

Ms. Flynt noted the development and use of a uniform sentencing order will also greatly improve the quality of data. Incorrect entries are not always the fault of the court specialist. Sometimes it is difficult to ascertain how to correctly enter the order. These little things will help--have good sentencing orders that are entered correctly with adequate and reliable data.

Ms. Morrison stated that another finding that came out of this analysis is that not all court specialist come back and amend the sentence screen after a probation hearing in which probation is granted. The sentencing screen then remains incomplete. The staff also working with AOC programmers to make modifications to the sentencing screen based on the court specialists feed back to the Commission to make data entry easier.

Ms. Davis suggested that Pardons and Paroles be included in any meetings held in the future since they use the database. They can also point out things that might need to be corrected. Ms. Morrison announced that she and Bennet Wright have been asked to serve on the evaluation subcommittee of the Chief Justice's Drug Court Task Force. They are working with Foster Cook, he is the lead on that subcommittee, in collecting descriptive data of existence drug courts. The Chief Justice wants to take this information to the legislature in February. She is asking for an example of some of the data, the number of admissions to drug court, clients served, how many active clients they currently have and the number of graduating clients. The Chief Justice is pushing for drug courts in every county in Alabama.

The next step of the evaluating committee is to develop a more detailed and descriptive data collection tool for the offender coming into drug court, while they are in drug court, and as they are leaving drug court. Ms. Morrison and Mr. Wright are working with Foster Cook on gathering the information needed for that data collection tool and with AOC in their MIDAS web-based application tool that is currently used by CROs and some community corrections as a case management system..

The commission staff was asked by Judge Rains of Fort Payne, Alabama to conduct a private training seminar on the sentencing standards and worksheets. In attendance were the DAs office, community corrections, pardons and paroles and clerk's office. Judge Rains wanted everyone to be involved, because of the way that his courtroom worked and the process that he has created for the worksheets. A lot of people were confused about how they should work. The staff listened to their process and how things were working in the courtroom and made suggestions on how to make that process better. They also had suggestions on how to make the e-worksheets website a better tool for everybody.

Bennet Wright informed the Commission that he and Ms. Morrison are going to visit the Virginia State Sentencing Commission in Richmond, Virginia. Dr. Rick Kern, Executive Director, will be hosting this event. This trip was arranged by Vera Institute of Justice. This trip will, hopefully, serve as blue print for the Commission's evaluation techniques for the use of the worksheets and develop compliant structure. The sentencing commission in Virginia is a very mature Commission with a large staff. Virginia has had a lot of success in truth in sentencing. Mr. Wright noted that he and Ms. Morrison would like to see the day to day operation and how they evaluate the use and compliance of their worksheets that are similar to Alabama's worksheets.

Mr. Wright noted that with the cooperation of Vera Institute, the sentencing commission conducted a community corrections survey. Surveys were mailed to all existing community corrections programs. The MIDAS program is case management program used by some community corrections programs. MIDAS does not currently allow for the collection of all the variables that the Commission needs. To move towards truth in sentencing the Commission really has to have a continuum of sanctions. The Commission sees community corrections as a vital element in that continuum of sanctions. Right now just through MIDAS for program evaluations the Commission can't tell all it needs to know about these programs. Through use of the survey the Commission would like to find out what is community corrections potential ability to serve at an immediate punishment sanction with truth-in-sentencing? What their capacities are. How many possible prison diversions can they handle? How are they operating right now?

Mr. Wright stated that if we move to truth in sentencing community corrections is vital aspect of that. Community corrections is going to be adept to handle a lot of prison diversions. Right now a lot of community corrections programs serve in cooperation with the CRO programs which don't necessarily encompass prison diversions. Mr. Wright noted that the Commission would like to know the composition of current community corrections programs and whether they are serving mainly misdemeanors/felonies. If they are serving felonies are these true prison diversions or just felony diversions. The submission of this survey is going to help the Commission get a grasp on how they are currently operating and their actual potential to operate as a great vital part in the truth-in-sentencing spectrum. The results of that survey will be reported at the next commission meeting.

Mr. Wright reported that the Montgomery County Community Corrections has taken a first step in implementing a risk assessment tool. The board in Montgomery has a contract with Auburn University. They contracted with the computer and software engineering department at Auburn University to come into Montgomery County to assist them in making a risk assessment tool. The initial meeting was held with Jeff Williams, the community corrections director, at the Department of Corrections; Rebecca Johnson, assistant director, of Montgomery County Community Corrections and a staff of six from Auburn University. If it goes well there, it will possibly be used at other community corrections programs as well.

Mr. Wright announced that starting next month there will be some modifications made in the Department of Corrections monthly statistical report. The Department of Corrections is going to disguise between inmates under their custody and inmates under their jurisdiction. While that is an essential element, the Commission is interested in the actual in-house population of those that are currently in major institutions whether they will be maximum, medium or minimum facilities in work center and work release facilities. Those encompass what they refer to as in-house population or their custody. Jurisdictional population extends to those inmates that are community correction programs, federal prisons and elsewhere. The sentencing commission has been mandated with dealing with the overcrowding problem--the actual overcrowding population in the Department of Corrections. The immediate concern is in inmates under their custody which is in-house population.

Ms. Flynt noted that the change in reporting may change the reported prison population because in the past the community corrections population has been included in that number.

Mr. Wright stated that one of the other collaborative efforts that won't get accomplished this year but hopefully it will be accomplished in the next 12 months as the Department of Corrections updates and improves their IT is the Commission will be able to receive more detailed admission and release information. Currently, because the volume of work that it entails the staff can only look at detailed admission and release information extracted on a yearly basis. In the future, hopefully, within the 12 months the staff will be able to view that information on a monthly basis rather than on a yearly basis so that it can immediately detect if there are any major changes in the admissions or releases from the Department of Corrections.

### **New Business**

Ms. Flynt asked if anyone had any new business that they wanted to discuss.

Ms. Davis nominated Buddy Sharpless to be a member of the advisory council. It was Seconded. Majority of members favored.

Ms. Flynt mentioned that there are other dates on the agenda that show that the commission staff will attend the Judge's Mid-Winter Conference. She encouraged members of the Commission and advisory council, if they get the opportunity to speak to

a rotary club or civic group. She suggested that they use the Commission's annual report and contact the commission staff for additional data.

Ms. Davis noted that one thing Rick Kern brought out in his study and most national studies tend to show is that you have somewhere over 70% of the crime that is committed by people between the ages of approximately 16 and 30 years of age. He brought this up in looking at their risk assessment so if you are looking at potential re-offenders that's the age group that most likely to go out and reoffend. He called it aging out of criminal activity by a lot of offenders--that age group and being male. It's only 15% percent of the offenders. More than 15% fall in that age group but the highest part of that 15% to 20% are within that age group that are committing most of the crimes.

Ms. Flynt noted that another key to all of this work is Elana Parker with the DOC. Ms. Parker is on loan from the Health Department. She is working with the re-entry programs there. She had been devoting her time to working with just HIV patients coming out of prison, but she has expanded now to include other inmates who EOS without supervision. Ms. Parker is working toward making sure the released offenders have access to programs to assist their re-entry, i.e. to obtain a drivers license or identification card; where to find medication they need if they are diabetic, how to find a place to live, employment, etc.

#### **Possible dates for Sentencing Commission Meeting**

Ms. Flynt noted that the Commission will need to vote on having the next meeting in December or January.

Rosa Davis moved for January. Dr. Harris seconded. Majority favored.

The next Commission meeting is scheduled to be held on January 18, 2008. The Commission plans to have at that meeting Dr. Rick Kern and Barb Tombs from Vera Institute of Justice. Ms. Tombs has been the director of Minnesota and Kansas. Rick Kern is the executive director of Virginia Sentencing Commission.

#### **Adjourn**

There being no further business the meeting was adjourned.